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MCCORMICK, PAULDING & HUBER LLP			KASZTEJNA, MATTHEW JOHN	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/826,869  
Filing Date: April 16, 2004  
Appellant(s): GOMEZ, RICARDO ALEXANDER

**MAILED**  
**MAR 26 2007**  
**Group 3700**

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Daniel G. Mackas  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 30, 2006 appealing from the  
Office action mailed October 26, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2002/0022762	Beane et al.	2-2002
5,720,391	Dohm et al	2-1998
6,910,582	Lantz	6-2005

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 10-15 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication 2002/0022762 to Beane et al.

**In regards to claim 1**, Beane et al disclose a sterile apparatus to protect endoscopes comprising: an impact resistant housing 110 having an outer surface defining an opening, an interior of the housing defining a canal having a first end communicating with the opening and a second end terminating within the housing for receiving a distal lens of an endoscope (see Figs. 2a-f); a defogging material disposed adjacent to the second end of the canal for defogging a distal lens of an endoscope when inserted within the canal (see paragraph 0056); and a self-sealing mechanism 128 disposed within the canal, the self-sealing mechanism being configured to allow for an endoscope to enter the canal and make contact with the defogging material and to prevent the defogging material from spilling out of the canal (see paragraph 0053).

**In regards to claims 2 and 4**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the canal is shaped for receiving a plurality of types of endoscopes (see paragraph 002).

**In regards to claim 3**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the apparatus is made of disposable material as it is well-known that all materials regardless of composition are capable of being disposed.

**In regards to claim 5**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the apparatus is configured to protect endoscopes during intermittent use (see paragraphs 007-0016).

**In regards to claim 6**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the apparatus is inherently configured to protect endoscopes during transportation (see Fig. 2a).

**In regards to claim 7**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the interior of the housing includes: a storage sheath defining the canal, the outer surface of the housing and the storage sheath defining a cavity therebetween; and an impact absorbing material substantially filling the cavity (see Figs. 2a-f).

**In regards to claim 10**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the impact absorbing material is a liquid (see paragraph 0057-0058).

**In regards to claim 11**, Beane et al disclose a sterile apparatus to protect endoscopes, wherein the impact absorbing material is a gas (see paragraph 0060).

**In regards to claims 12-15**, Beane et al disclose a sterile apparatus to protect endoscopes, further comprising an anchor and a cord attached to the housing and the

anchor, to be used for a means for removable affixing the housing to a surface (see paragraphs 0066-0068).

**In regards to claim 42**, Beane et al disclose a sterile apparatus to protect endoscopes, further comprising a reservoir for communicating with the second end of the canal for accommodating the defogging material (see paragraphs 0012-0013)

Claims 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0022762 to Beane et al. in view of Dohm et al. (U.S. Patent No. 5,720,391).

3/1/07

**In regard to claim 8**, Beane et al. disclose a sterile apparatus to protect endoscopes but are silent with respect to wherein the impact absorbing material is Styrofoam. However, Dohm et al. teach a similar transportation case for a medical instrument having a spacer 212 made of shock absorbing material, such as a styrofoam material (see col. 5, lines 64-66). Dohm et al. thus demonstrate that the use of styrofoam materials for cushioning a medical device during transport are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to utilize Styrofoam in the apparatus of Beane et al. as an alternate means for cushioning the endoscope.

Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0022762 to Beane et al. in view of Lantz (U.S. Patent No. 6,910,582).

3/1/07

**In regard to claim 9**, Beane et al. disclose a sterile apparatus to protect endoscopes but are silent with respect to wherein the impact absorbing material is a

gel. However, Lantz teaches a similar transportation case having a gel pack 40 for cushioning (see col. 5, lines 55-65). Lantz thus demonstrates that the use of gel materials for cushioning is well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to utilize a gel in the apparatus of Beane et al. as an alternate means for cushioning the endoscope.

**(10) Response to Argument**

Applicant states that Beane et al. does not teach or suggest a self-sealing mechanism disposed within the canal, the self-sealing mechanism ~~and~~ configured to allow for an endoscope to enter the canal and make contact with the defogging material and to prevent the defogging material from spilling out of the canal. However, Beane et al. disclose the device wherein the distal end 124 is attached to bottle 118, and proximal end 122 is attached to a stem 126 on housing 112. Distal end attaches to bottle 118 via complementary screw threadings 128 (inside tube 114) and 130 (on bottle 118). Alternatively, bottle 118 and distal end 124 can be attached by an interference or press fit, using, e.g., an O-ring. Proximal end 122 is similarly attached to stem 126 using, e.g., complementary screw threadings, an insert mold, or an interference fit (see paragraph 0053). Thus, the interference or press fitting may consist of an O-Ring which would clearly be disposed within the tube, as seen in Figure 2a. The O-ring would act as a self-sealing mechanism as it is well known that O-rings are effective for forming seals. This self-sealing mechanism would further allow for an endoscope to enter the canal, as it clearly does not interfere with the endoscope from entering tube 114. Lastly, the

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solution of Beane et al. is retained in a sponge, however this is not suffice to say Beane et al. does not require a self-sealing mechanism as it is well known that sponges leak excess fluid when saturated. Thus it would be obvious to use the self-sealing O-ring, as suggested by Beane et al., to ensure the defogging material does not spill out of the canal. As broadly as claimed, Beane et al. meet the limitations of the recited claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Matthew Kasztejna  
Art Unit 3739

3/8/07

Conferees:

  
LINDA C. M. DVORAK  
SUPERVISORY PATENT EXAMINER  
GROUP 3700